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REMARKS

Claims 1 to 24 remain pending. Claims 11, 12 and 19 to 24 have been withdrawn. Claims 25 to 29 have been added.

Claims 1 to 10 and 13 to 18 have been rejected under 35 U.S.C. 112, first paragraph, as being non-enabled.

The rejection of claims 1 to 10 and 13 to 18 under 35 U.S.C. 112, first paragraph, is not well taken for the reasons set forth below. The specification is indeed enabling with respect to the above claims.

First, the Action alleges that the specification does not disclose how plant seed cells are kept in a viable undifferentiated state until they reach the consumer. Although not defined in the Action, the meaning of the term "viable" will be presumed to mean "living" for purposes of review. Applicants request clarification should another meaning have been intended.

The allegation that the specification does not disclose how plant seed cells are kept in a viable undifferentiated state is not well taken. The undifferentiated plant seed cells being "viable," while within the scope of the invention, is not a requirement for it. The undifferentiated plant seed cells may indeed be nonliving. For example, the specification discloses at page 6, lines 18 to 26, that the walls of the plant seed cells may be homogenized (broken or fractured) to enhance release of cell seed constituents. Clearly, homogenization of the walls of plant seed cells prior to inclusion in a composition would render

them nonliving. Another instance in which the plant seed cells would be nonliving is shown at page 7, lines 29 to 31, which relates to a spray-dried form.

Second, the Action also alleges that the claimed vehicles in claim 9, especially the alcohols, may be detrimental to undifferentiated cells. This allegation is likewise not well taken. As discussed at length above, the substantially undifferentiated plant seed cells useful in the claimed invention can be nonliving, so detriment to cells in that instance is moot.

Third, the Action also alleges that the specification does not disclose how the undifferentiated plant seed cells are kept in an undifferentiated state in culture media without progression towards differentiation. This allegation is likewise not well taken. The specification discusses in the bridging paragraph at pages 4 to 5 that undifferentiated plant seed cells are extracted from the seed, cultured and homogenized in vitro. The seed cells are cultured in a medium that promotes the undifferentiated state. The foregoing is sufficient to enable the claimed invention. Those skilled in the art know and understand that to differentiate seed cells, certain plant growth factors or plant hormones are required to be present in the culture medium. In their absence, cells continue to divide but remain undifferentiated.

Fourth, the Action also alleges that the specification is nonenabling regarding how culture media would be incorporated into the claimed composition. The Action states that the second paragraph of page 5 discloses incorporation of whole seeds or

portions thereof in culture media. The Action also states that the third paragraph of page 7 discloses that the entire culture media can be admixed with a vehicle to form a coarse composition. The Action states that in view of the product forms in claim 10, it was not clear from the specification how undifferentiated plant seed cells will be incorporated into the products and stay in undifferentiated state and how the whole seed could be present in the products. The Action notes the potential difficulty of incorporating coconut seeds, which are relatively large.

The allegation that the specification is nonenabling regarding how culture media would be incorporated into the claimed composition is not well taken. The presence of whole plant seeds or portions thereof in a culture media does not render nonenabling the incorporation of the culture media containing cultured undifferentiated plant seed cells into the composition of the present invention. Independent claims 1 and 13 do not require the presence of whole plant seeds or portions thereof but also do not preclude their presence. Independent claims 1 and 13 do require that cultured undifferentiated seed cells be present. There is no technical reason that would preclude the presence of whole plant seeds or portions thereof in a topical composition. On the contrary, particulates, such as talc, pumice, and silica, are commonly incorporated into topical compositions. In any event, if seeds or portions thereof are present and a composition without either is desired, it is well within the ordinary skill in the art to remove such seeds or portions thereof by well-known techniques, such as filtration. Working examples of compositions having such seeds or portions thereof are not necessary in any event, but are particularly not

called for in view of the reasons stated above. Regarding incorporation of seed cells from the coconut plant, those obtained from portions of coconut seed or from seed cell constituents of coconut seed are clearly within the scope of the claimed invention as set forth in new claim 25. Mention of the coconut plant has been deleted from claim 8.

Claims 17 and 18 have been rejected under 35 U.S.C. 112, first paragraph, as being non-enabled. The Action admits that the specification is enabling for improving the aesthetic appearance of skin. The Action alleges that the specification does not enable preventing loss of collagen and elastin, skin atrophy, wrinkles, hyperpigmentation, skin sagging, loss of glycosaminoglycans, or cellulite formation.

The rejection of claims 17 and 18 under 35 U.S.C. 112, first paragraph, is not well taken. The specification is enabling for both "treating" and "preventing" with respect to the improvements set forth in claims 17 and 18. Treating and preventing are not mutually exclusive. For instance, wrinkling due to photoaging can be prevented by application of sunscreens, which prevent UV light from inflicting damage to the skin or which allow existing damage to be repaired by intrinsic physiological mechanisms through preventing further exposure to damaging UV radiation. Thus, it is mere speculation to consider "treating" and "preventing" as exclusive with respect to each other,

Claims 1, 6, 9 and 10 have been rejected under 35 U.S.C. 102(b), as being anticipated by U.S. Patent No. 5,698,423 ('423). The Action states that the composition of claim 1 reads on seeds

in water. The Action also states that the claim term "topical" does not limit the scope of the claim and reads on any surface. The Action also states that '423 discloses a plant cell culture that has cells from Azadirachta indica in an aqueous solution and that cultured cells are undifferentiated.

The rejection of claims 1, 6, 9 and 10 under 35 U.S.C. 102(b) is traversed. Independent claim 1 requires that the composition be applied to the skin, nail, lips, or hair. '423 does not disclose topical compositions for the skin, nail, lips, or hair nor does it disclose application to same.

Claims 2 to 5 and 7 have been rejected under 35 U.S.C. 103(a) as being anticipated by '423.

The rejection of claims 2 to 5 and 7 under 35 U.S.C. 103(a) is traversed for the reasons set forth above in the rejection under 35 U.S.C. 102(b).

Reconsideration of claims 1 to 10 and 13 to 18 is deemed warranted in view of the foregoing, and allowance of said claims as well as new claims 25 to 29 is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Robert Dean', is written over a horizontal line.

Dated: January 15, 2004

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